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QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS

Written statement submitted by North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[11 March 1998]

1. No one would question the need to regulate international society and to associate with that regulation sanctions against those who fail to observe the rules. But such measures must, as in every law-governed society based on the fundamental principles of the Charter of the United Nations be clearly defined as to their content and duration; be equally applicable to all; be proportional to the offence.

2. Sanctions must not give rise to results contrary to the human rights enshrined in international instruments.

3. In practice, the situation is paradoxical. Economic sanctions are imposed only on selected small States, while the great powers and their protected allies escape them, however they behave.

4. However socially disastrous the effects of their decisions may be, the large economic operators (finance companies, transnational industrial or trading companies, etc.), whose role determines how real the economic and social rights guaranteed by numerous international instruments will be, largely escape both regulation and sanctions.

5. In the unipolar society now under construction, a single power, auxiliary to the dominant transnational private interests and self-proclaimed "world leader", assimilating its own interest to that of the entire international community, is gradually building a corpus of pseudo-international law that is no more than the internationalization of its own domestic law. The embargoes against Iraq, Libya, Cuba, etc. constitute a system of sanctions identical to that provided for in the United States Torricelli Act of 1992 and Helms-Burton and d'Amato-Kennedy Acts of 1996. United States foreign policy is at the service of the large groups that dominate the world economy, and United States economic law is at the service of United States policy. The project now being pursued aims at achieving identity between international and United States law within the framework of globalization on behalf of a predominantly American cosmo-politocracy.

6. The support that certain States (fewer and fewer of them) still give to the unilateral embargoes is evidence of complicity with a view to their own subordination. The United States antiquated practice is simply a relic of the "private justice" that the existence of the United Nations has made illicit. In its Judgment of 27 June 1986, the International Court of Justice came out clearly against the United States wish to take unilateral "countermeasures" against Nicaragua.

7. The embargo that has been in force against Cuba since 1959 has been very clearly condemned by the Organization of American States, as well as by the Holy See on the occasion of Pope John Paul II's visit to Havana early in 1998.

8. The economic sanctions decreed by the Security Council against Iraq (in 1990) and Libya (in 1992) are of a different kind, but derive from United States pressure on certain States and the United Nations and are profoundly legally defective: no time-limit has been set on the sanctions and the embargoes are dragging on. In substance, they constitute a system of supervision over States Members of the United Nations, imposing thereby a regime of permanent semi-sovereignty contrary to the Charter.

9. The periodic renewal of the embargoes on pretexts put forward by no more than the "experts" of the Powers parties to the disputes (for example, the presence of weapons of mass destruction in Iraq) shows that the economic sanctions have as their objective not the restoration of the authority of international law (the only objective that would itself be lawful) but the weakening of the political system of a State Member of the United Nations and mastery of the energy resources that the Great Powers, and chiefly the United States - for all they control the price per barrel - need.

10. The measures instituted against Libya for an act of terrorism of which the alleged evidence has yet to be discussed in adversarial, public proceedings where the judges are not also parties to the case, and with regard to which the United States has demanded the extradition of Libyan nationals, in breach of almost all the relevant national and international law (such as the 1971 Montreal Convention), cannot be prolonged indefinitely for the sole benefit of the United States. Libya's various proposals for a jurisdictional or negotiated solution have never been considered admissible. The Security Council has thus become, at the instigation of the United States and despite the growing reservations on the parts of France, Russia and China, an institution charged with maintaining international tension and not with re-establishing the rule of international law.

11. The fact that the act of which Libya has been accused is ancient and the disproportion between the sanctions imposed on the entire Libyan people and the act complained of (an act of which many other States could be accused, including the United States, whose involvement in Italian domestic terrorism has been proven by the Italian judicial system) deprived the embargo, which has now been in operation for more than seven years, of all legal foundation.

12. The Commission on Human Rights is competent to examine the consequences of such measures for human rights and the rights of peoples, for common to the embargoes is the fact that by their impersonal nature they threaten the most fundamental individual right, the right to health, and the collective right to development.

13. The individualization of penalties is a generally admitted fundamental principle of civilized law. International criminal courts, in particular the International Criminal Court in The Hague, are based on individual liability and the fitting of the penalty to the person, including in the sanctioning of the crime of genocide. Sanctions such as an embargo are necessarily collective, even though they derive from offences that are very different from genocide.

14. Collective measures affect only the weakest States or States which, unlike others that may have committed equivalent or more serious offences, do not have a powerful protector. The deliberate discrimination in the application of penalties is itself illegal.

15. The collective nature of sanctions makes them incompatible with respect for human rights. The international community has, with time, come to accept this. It should be noted in this connection that the obligations to which States subscribed in acceding to international human rights instruments are not suspended in the event of embargoes. Such instruments remain fully

applicable and binding, so that all deviation from their provisions is prohibited. The Powers (the United States in particular) that lose no opportunity to stress the need to respect human rights make those rights totally ineffective by the measures they impose on certain peoples. Domestically, they reproach some States with what they themselves impose in their international practice. The International Court of Justice stated, in a judgment dating from 1971, that the Namibian people, which was then under South African domination, must not suffer as a result of the sanctions instituted against the apartheid regime.

16. Moreover, both the United Nations standing in international public opinion and the prestige of international law, already so limited, inevitably suffer from the inequality of the treatment meted out to peoples according to their degree of subordination to the United States, i.e., according to purely political, not legal or human criteria.

17. The United Nations, including the Security Council, is an institution for the promotion of human rights. International law must not be used to cloak the destruction of peoples and the suppression of sovereignty.

18. Embargoes are merely one of many tools for controlling international society for the exclusive benefit of the forces and interests that stand to gain from globalization. This economic and financial process needs a transnational political "system" consistent with a globalized market economy.

19. The Commission on Human Rights cannot pursue an approach in which it separates the defence of human rights from the general trend of international society and its dominant interests. It must not become part of the movement to institute "global governance" to the detriment of peoples and their self-determination.

20. The Commission on Human Rights would therefore be justified in drawing attention to the incompatibility between economic sanctions and the protection of human rights, proving that incompatibility by disseminating information on the conditions of the peoples subjected to embargoes, and alerting other United Nations bodies (particularly the International Law Commission, whose job it is to propose new forms of sanctions compatible with respect for human rights) to the problem.